



#27

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## PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A7145

Phillip MERRICK, et al.

Appln. No.: 09/274,979

Group Art Unit: 2126

Confirmation No.: 9188

Examiner: St. John Courtenay III

Filed: March 23, 1999

For: XML Remote Procedure Call (XML-RPC)

**PETITION UNDER 37 CFR 1.181 AND MPEP 711.03(c)(I) FOR  
WITHDRAWAL OF HOLDING OF ABANDONMENT****MAIL STOP PETITION**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**RECEIVED**

MAR 23 2004

Technology Center 2100

Sir:

The undersigned, on behalf of Applicants, requests the Commissioner to withdraw the holding of abandonment of the above identified application for the following reasons. The application was abandoned for allegedly not responding to the Office Action dated August 5, 2003. However, an *Amendment* was, in fact, sent to the PTO via facsimile on January 5, 2004 (within the required time), but has apparently been misplaced by the PTO. A copy of the Amendment is attached hereto<sup>1</sup>, along with a copy of the "Auto Reply Facsimile Transmission" verifying transmission.

<sup>1</sup> During facsimile transmission, it was noticed that the first page was erroneously titled "Request for Reconsideration," so a replacement first page properly titled "Amendment" as added to the transmission, thus resulting in the page count of 34 for the transmission.

PETITION FOR WITHDRAWAL OF HOLDING  
OF ABANDONMENT  
USSN 09/274,979

Submitted herewith are the following documents:

1. Request for Reconsideration filed January 5, 2004 w/Auto-Reply Facsimile Transmission receipt verifying transmission.
2. Notice of Abandonment.

From the above, it is clear that this firm, representing Applicants, duly responded to the Office Action of August 5, 2003, in a timely manner and that the Patent Office received the response. Accordingly, it is respectfully submitted that the application should not have been abandoned and the Commissioner is respectfully requested to withdraw the holding of abandonment.

Respectfully submitted,

  
\_\_\_\_\_  
David J. Cushing  
Registration No. 28,703

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE  
23373  
CUSTOMER NUMBER

Date: March 19, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
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Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/274,979	03/23/1999	PHILLIP MERRICK	A007145	9188

23373 7590 03/10/2004

SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

DOCKETED

MAR 12 2004

EXAMINER

COURTENAY III, ST JOHN

ART UNIT

PAPER NUMBER

2126

DATE MAILED: 03/10/2004

26

Please find below and/or attached an Office communication concerning this application or proceeding.

MAR 19 2004

TRADEMARK  
OFFICE**Notice of Abandonment**

Application No.

09/274,979

Examiner

St. John Courtenay III

Applicant(s)

MERRICK ET AL.

Art Unit

2126

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 05 August 2003.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:



St. John Courtenay III  
Primary Examiner  
Art Unit: 2126

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



# Auto-Reply Facsimile Transmission

TO:

Fax Sender at 202 293 7860

Fax Information

Date Received:

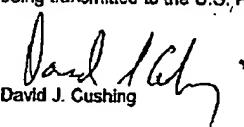
1/5/2004 11:46:25 PM [Eastern Standard Time]

Total Pages:

34 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page  
=====>

JAN-05-2004 23:54		SUGHRUE MION PLLC	202 293 7860 P.01
		2100 Pennsylvania Avenue, NW Washington, DC 20007-3125 T 202.293.7060 F 202.293.7860 <a href="http://www.sughrue.com">www.sughrue.com</a>	
<b>RECEIVED</b> MAR 23 2004 Technology Center 2100			
<b>FAX</b>			
Date	January 5, 2004		
To	Examiner Courtenay		
Of	Group Art Unit 2126		
Fax	703-872-9306		
From	David J. Cushing		
Subject	Amendment for Appl. No. 09/274,979		
Our Ref	A7145		
Pages	33 (including cover sheet)		
Please call attention to problems with this transmission by return fax or telephone. Thank you.			
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I hereby declare that this Amendment is being transmitted to the U.S. Patent and Trademark Office on January 5, 2004.			
 David J. Cushing			
PAGE 104 * REVD AT 1/5/2004 11:46:25 PM [Eastern Standard Time] * SYRCSPTO-EF1F-11 * DNS:172.130.1 * CSID:202 293 7860 * DURATION [min:ss] 11:05			

\*\*\*\*\* -COMM. JRNAL- \*\*\*\*\* DATE JAN-06-2004 \*\*\*\*\* TIME 00:05 \*\*\*\*\* P.

MODE = TRANSMISSION

START=JAN-05 23:54

END=JAN-06 00:05

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG. NO.	PROGRAM NAME
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-SÜGHRÜE MION PLLC

\*\*\*\*\* -WASHINGTON DC - \*\*\*\*\*

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MAR 23 2004

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**FAX**

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Date January 5, 2004  
To Examiner Courtenay  
Of Group Art Unit 2126  
Fax 703-872-9306  
From David J. Cushing  
Subject Amendment for Appl. No. 09/274,979  
Our Ref A7145  
Pages 33 (including cover sheet)

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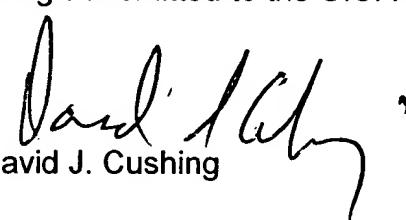
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I hereby declare that this Amendment is being transmitted to the U.S. Patent and Trademark Office on January 5, 2004.

  
David J. Cushing